

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

CLARENDON NATIONAL INSURANCE
COMPANY, a New Jersey corporation,

Plaintiff,

-vs-

No. CIV 99-1218 LH/DJS

SHUTTLEJACK EQUIPMENT LEASING, LLC, a
New Mexico corporation, BUSRIDE OF NEW
MEXICO, INC., a New Mexico corporation,
SHUTTLEJACK, INC., a New Mexico corporation,
SHUTTLEJACK AIRPORT SERVICE, INC., a
New Mexico corporation, ACTIVITY BUS
TRANSPORTATION COMPANY, INC., a New
Mexico corporation, EL CONEJO AMERICANO
BUS LINE, INC., a New Mexico corporation, RAY
SENA, ROSE ANN SENA, ROBERT HEUSNER,
WELLS FARGO EQUIPMENT FINANCE, INC. a
Minnesota corporation, GRANITE STATE
INSURANCE COMPANY, a Pennsylvania
corporation, NATIONAL UNION FIRE
INSURANCE COMPANY OF PITTSBURGH, a
Pennsylvania corporation, PAULINE CHAVEZ,
MARY CATHERINE APODACA, ROSALIE
SANCHEZ, LUCAS SALAZAR, JEREMY
SALAZAR, GRACIELA TRETO, DEBBIE L.
CARDIEL, LITA RIVERA, DEBRA OLINGER,
MARCOS PADILLA, SR., GEORGINA
MCGUIRE, MATTHEW MCGUIRE, THOMAS E.
CLIFFORD, CAMILLE P. CLIFFORD, SCOTT
ECCLES, ANNA ECCLES, JAMES C. MARTIN,
CHARLOTTE G. MARTIN, PATRICK J.
MARTIN, ELIZABETH NOLAN, MARK
ROMERO, VELMA ROMERO, DAVID
TOLAND, LOU ANN TOLAND, KENNETH
WARNER, BRENDA WARNER, and JOHN OR
JANE DOE NOS. 1 TO 25,

Defendants.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on Plaintiff Clarendon National Insurance Company's Motion to Strike Entry of Appearance and Motion to Disqualify Gallagher, Casados & Mann, P.C. (Docket No. 90) and Plaintiff Clarendon National Insurance Company's Motion to Strike the Answer of the Bus Entity Defendants (Docket No. 94), both filed January 31, 2000. The Court, having considered the Motions, the memoranda of the parties, the record in this matter, and the applicable law, and otherwise being fully advised in the premises, finds that the Motion to Strike Entry of Appearance and Motion to Disqualify Gallagher, Casados & Mann, P.C. is not well taken in part and will be **denied in part** and the Motion to Strike the Answer of the Bus Entity Defendants is not well taken and will be **denied**. Furthermore, the Court will **stay this matter** pending the parties' completion of mediation efforts in the underlying state court cases.

Plaintiff Clarendon National Insurance Company ("Clarendon") moves to strike the Answer of Shuttlejack Equipment Leasing, LLC, BusRide of New Mexico, Inc., Shuttlejack, Inc., Shuttlejack Airport Service, Inc., Activity Bus Transportation Company, Inc. El Conejo Americano Bus Line, Inc., Ray Sena, and Rose Ann Sena ("Bus Entity Defendants") on grounds that it was not timely filed. Clarendon also moves as part of its other Motion presently before the Court, to strike the untimely entry of appearance made on behalf of the Bus Entity Defendants. It is true that both the Answer and Entry of Appearance were untimely. The Court notes, however, that Clarendon commenced this action by filing its Complaint for Declaratory Judgment on October 20, 1999, and that the Bus Entity Defendants filed their untimely Answer less than two months later on December 16, 1999. The Bus Entity Defendants' counsel had filed his untimely entry of appearance one week earlier, on December 9, 1999.

By separate Memorandum Opinion and Order the Court has denied Plaintiff's Motion for


Entry of Default Judgment against the Bus Entity Defendants, finding that Plaintiff had not alleged and could not show any prejudice stemming from the untimely Answer. The Court also noted that other Defendants filed responsive pleadings after that of the Bus Entity Defendants and that this matter continues to be stayed for discovery purposes on joint motion of the parties pending mediation efforts in the underlying state court suits. These factors, along with the strong policy favoring decision on the merits, apply with equal force to the Entry of Appearance and the Bus Entity Defendants' Answer and the Court will not strike either.

Furthermore, in the interests of judicial economy the Court will expand the stay of discovery in this matter to stay the case. Thus, the Court declines to address Plaintiff's Motion to Disqualify Gallagher, Casados & Mann, P.C. at this time. The parties are to inform the Court when circumstances in the state court cases warrant lifting of the stay in this Court.

IT IS HEREBY ORDERED that Plaintiff Clarendon National Insurance Company's Motion to Strike Entry of Appearance and Motion to Disqualify Gallagher, Casados & Mann, P.C. (Docket No. 90), filed January 31, 2000, is **DENIED IN PART**.

IT IS FURTHER ORDERED that Plaintiff Clarendon National Insurance Company's Motion to Strike the Answer of the Bus Entity Defendants (Docket No. 94), filed January 31, 2000, is **DENIED**.

IT IS FURTHER ORDERED that this matter is **STAYED**.


UNITED STATES DISTRICT JUDGE